

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**THE NORTHEAST OHIO COALITION
FOR THE HOMELESS, et al.,**

Plaintiffs,

v.

**CASE NO. C2-06-896
JUDGE ALGENON L. MARBLEY
MAGISTRATE JUDGE TERENCE P. KEMP**

**JENNIFER BRUNNER,
in her official capacity as
Secretary of State of Ohio,**

Defendant.

ORDER

This matter is before the Court on Plaintiffs' Motion for a Preliminary Injunction. The Court has carefully considered the parties' submissions in support of and opposing the preliminary injunction, the oral arguments by counsel, evidence presented by the parties, and the relevant statutory and case law.

On October 24, 2008, this Court issued an Order adopting the Secretary of State's Directive 2008-101. The Court's October 24, 2008 Order, however, did not resolve the parties' disputes regarding the effect of poll worker error and the validity of addresses for persons without permanent addresses. This Order is based upon the agreement of the Plaintiffs and the Secretary of State and addresses these two issues.

Poll worker Error

Consistent with this Court's October 24, 2008 Order and Directive 2008-101, an eligible voter casting a provisional ballot should not be disenfranchised because of poll worker error in processing a provisional ballot.

The expedited discovery taken by Plaintiffs has revealed that some county boards of elections do not currently count a provisional ballot if the poll worker, for unknown reasons, has not signed the provisional ballot. The failure of a poll worker to sign a provisional ballot, standing alone, does not constitute a valid reason to reject a provisional ballot.

In addition, no provisional ballot cast by an eligible elector should be rejected because of a poll worker's failure to comply with duties mandated by R.C. 3505.181, which governs the procedure for casting a provisional ballot.

Accordingly, the Secretary of State is hereby **ORDERED** to instruct the County Boards of Election that provisional ballots may not be rejected for reasons that are attributable to poll worker error, including a poll worker's failure to sign a provisional ballot envelope or failure to comply with any duty mandated by R.C. 3505.181.


Addresses for Persons Without Permanent Addresses

Similarly, some discovery in this case indicated that at least one county might reject provisional ballots if a person uses their actual residence location if that location is not a building. Pursuant to Advisory 2008-25 and R.C. 3503.02(I), if a person does not have a fixed place of habitation, the shelter or other place where the person intends to return shall be deemed his residence for purposes of voting.

Accordingly, the Secretary of State is hereby **ORDERED** to instruct the County Boards of Elections that provisional ballots may not be rejected for failing to list a building address on the provisional ballot envelope if the voter resides at a location that does not have an address.

IT IS SO ORDERED.

10-27-2008
DATED


EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE

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Defendant.

ORDER

This Order clarifies the previous Order issued in this case on October 27, 2008.

First, the earlier Order did not, in any manner modify, reduce or expand the current Ohio law regarding the method of voting by the homeless. In 2006, the Ohio legislature enacted the current law, Ohio Revised Code § 3503.02(l) which states:

If a person does not have a fixed place of habitation, but has a shelter or other location at which the person has been a consistent or regular inhabitant and to which the person has the intention of returning, that shelter or other location shall be deemed the person's residence for the purpose of registering to vote.

Second, the previous Order was prepared and submitted to the Court by counsel for Plaintiffs and Defendant, the Ohio Secretary of State. The only portion of the previous Order which referenced voting by the homeless was the requirement that the Secretary of State "instruct the County Boards of Elections that provisional ballots may not be rejected for failing to list a building address on the provisional ballot envelope if the voter resides at a location that

does not have an address.” (Order, 10/27/08, at p.2)

Finally, the Court notes that the statute set forth above as enacted by the Ohio legislature sets forth the only standards, by either the legislature or the various courts, which regulate voting by the homeless in Ohio .

October 29, 2008

DATE

/s/Edmund A. Sargus, Jr.

EDMUND A. SARGUS, JR.

UNITED STATES DISTRICT JUDGE